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By EFS

In Re Application of: Keith James Hensel
US Application Number: 10/562,025
Filing Date: 22 December 2005
Title: Juicer
Group Art Unit:
Examiner:
Attorney Docket No: BRE0308U

24 June 2009

Arguments and Amendments After Final Rejection

OK TO ENTER: /SP/

09/13/2009

Dear Sirs,

The Applicant gratefully acknowledges the receipt of the examiner's Office Action Summary and Final Rejection mailed on May 11, 2009. The undersigned contacted the examiner by telephone and an interview was conducted regarding the aforementioned examiner's report. Amended claims are attached. None of the claims include new subject matter. Certain dependencies have been incorporated into independent claim 21. It is believed that claim 21 is patentable and that no reference or combination of references discloses all of the features of claim 21 or its dependencies.

It seems as though the examiner's primary argument is that plastics and metals are interchangeable and that all of the examiner's art citations arise from the "same field of endeavour". The examiner is requested to observe that even under the Supreme Court's

decision in KSR v. Teleflex 82USPQ2d 1385 (“KSR”). The examiner is still obliged to make factual determinations and not just offer conclusions that lack factual basis of some sort. In the most recent Office Action, the examiner has reached certain conclusions which are offered as facts, but that are not. The examiner suggests that the interchangeability of plastics and metals is a fact. First, the claimed invention is more than a substitution as will be explained below. Further, although metals and plastics are sometimes interchangeable, it is not a fact that they are always interchangeable. The real questions are (a) when are metals and plastics “interchangeable”, (b) how are metals and plastics “interchangeable” and (c) is the “interchange” an obvious one. Importantly, in this case it is extremely important to recognise that what the Applicant is claiming is not a plastic part for which an interchangeable metal substitute has been provided. The claimed invention can be seen as to the subdivision or partitioning of a previously all-plastic juicer cap into two distinct parts and providing a metal substitution (with modifications) for only one of the parts (the feedtube). The plastic part is also modified by providing the claimed vertical rim. A seal is also provided. The sum total of modification destroys the notion that this is mere substitution. Claim 21 now relates to a specific way of solving a problem in a way not observed or suggested in any of the art citations provided by the examiner. The limitations now introduced into claim 21 have been present since the inception of this prosecution and originated in the Applicant’s PCT application. Accordingly, the limitations in claim 21 cannot be seen as presenting “new” issues.

The examiner also contends that all of the cited references are “in the same field of endeavour”. No supporting facts are offered for this conclusion. The Applicant cannot ascertain what the examiner means by “same field of endeavour”. The Applicant is an international manufacturer, distributor and designer of kitchen appliances. Apart from the kind of fruit and vegetable juicers seen in the Harrison reference the Applicant has no design related contact with devices of the kind shown in Prudhomme or Nejat-Bina and disagrees that Prudhomme and Nejat-Bina are in any sense in the same field of endeavour. Thus, only the examiner contends that all of the references are in the same field. The Applicant contends that the correct technical field or field of endeavour for this invention relates fairly specifically to fruit and vegetable juicers, or at least devices having a stressed feed tube and pusher arrangement.

The examiner is urged to note that none of the citations show the kind of sealing arrangement which is now recited in claim 21. That arrangement specifically comprises a particularly configured gasket that is interposed between the flange and the cap. The gasket has the features of a neck and a surrounding ring.

The examiner is bound to adhere to the Graham enquiries and has not done so. The claimed invention now recites a unique assembly of polymeric cap and metal feed tube. No reference shows this kind of assembly nor any analogous assembly of stress bearing metal tube with a transparent plastic cap. Claim 21 also specifically recites that the cap has a vertical rim and that a portion of a gasket is interposed between the vertical rim and the feed tube. Further, the claim recites that the specially configured gasket is also interposed between the flange and the cap. None of the art citations at all discuss this kind of gasket arrangement either as an analogous solution to this kind of problem or even in the most general sense. The examiner's attention is also drawn to dependencies, particularly the use of the retaining ring in claims 26 and 27 and the additional feature of the penetration of the fasteners through the surrounding ring of the gasket and through the cap into the retaining ring as particularly pointed out in claim 27. None of the art citations show these kind of engineering features. Accordingly, the Applicant suggest that the examiner has not properly determined the scope and content of the prior art nor ascertained the differences between the claimed invention and the prior art as required by both John Deere and KSR. The examiner has also not resolved, beyond a bald conclusion, the level of ordinary skill in the juicer art. The examiner has not offered any reason why someone of ordinary skill would either want to consider all of the citations against claim 21 or combine them other than by stating that metal and plastic are interchangeable.

It is also clear that the examiner must explain why the differences between the prior art and the claimed invention would have been obvious to someone of ordinary skill. Instead of explaining, the examiner has merely concluded. The examiner has treated the invention as a mere substitution of metal for plastic and has failed to recognise that the invention comprises the deconstruction or conceptual decomposition of an all plastic part

into an assembly of a plastic part and an metal part, modifying both and then providing a special sealing features between them.

There would have been many, many ways to solve this problem, and few would have been suitable to the commercial and technical requirements of the market. The examiner has also not acknowledged the role of invention in the recognition of this particular problem. When an excess of raw food material is introduced into the feed tube and compressed with a pusher, there is a risk of splitting the feed tube because of the hoop stresses imposed by the food pusher. Modern juicers are susceptible because the feed tube is plastic and larger feed tubes have become popular. This has been addressed by different manufacturers in different ways and has resulted in stronger plastic feed tubes, possibly thicker plastic feed tubes but not metal feed tubes in conjunction with a plastic cap or lid. The oldest art citations produced by the examiner go back to 1942 and still, there is no evidence that any one in the juicer or food art appreciated the availability of a commercially viable appreciation of or solution to the problem of feed tube splitting.

The examiner is also urged to consider the substantial commercial success enjoyed by this invention. If given the opportunity, the Applicant would be willing to produce affidavit evidence to the effect that the Applicant is a world leader in juicer development, that the commercial product incorporating the features of claim 21 is one of their commercially most successful models and that juicers constructed in accordance with the teachings and scope of claim 21 now enjoy considerable and actual sales internationally, particularly in Australia, Russia, China, Europe, the United States, New Zealand and Canada. Further, the Applicant asserts and is willing to produce affidavit evidence to the effect that shortly after the introduction of its invention, one of its competitors (Sunbeam) copied the invention and now commercially offers a juicer having a metal feed tube attached to the cap in the same way as in the Applicant's claim and Applicant's device. This kind of blatant imitation, so shortly after the product release is highly indicative of the inventive nature of claim 21.

Conclusion

The present invention is not a mere combination of prior art elements nor an obvious substitution according to known methods to yield predictable results. The examiner's

citations can not be combined, factually or legally, to produce the claimed structure. The Nejat-Bina and Prudhomme references are irrelevant. Favourable reconsideration is requested.

Please charge any deficiency in the fees due to our Deposit Account No. 503458 in the name of Molins & Co.

Regards,

A handwritten signature in dark ink, appearing to read "Michael Molins", written in a cursive style.

Michael Molins

Reg. No. 31785

Customer No. 33372

MM/rm